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October 18, 2004

**SUMMARY OF  
*EX PARTE* PRESENTATION**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWA325  
Washington, DC 20554

**Re: Ex Parte Presentation WC Docket No. 04-313; CC Docket No. 01-338**

Dear Ms. Dortch:

On October 15, 2004, the undersigned and James W. Olson, United States Telecom Association (USTA), Brian J. Benison and Christopher M. Heimann, SBC Telecommunications, Inc., and Evan T. Leo, Kellogg, Huber, Hansen, Todd & Evans, met with the following members of the Wireline Competition Bureau: Tom Navin, Jeremy Miller, Carol Simpson, Tim Stelzig, Gail Cohen, Ian Dillner, Russ Hanser, and Cathy Zima. The purpose of the meeting was to discuss the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking<sup>1</sup> ("NPRM") in the above-referenced proceeding. In the NPRM, the FCC seeks comment on alternative unbundling rules consistent with section 251(c)(3) of the Communications Act of 1934, as amended ("the Act") and in light of the U.S. Court of Appeals for the District of Columbia Circuit's decision in *United States Telecom Ass'n v. FCC*.<sup>2</sup>

USTA articulated that the FCC must develop unbundling rules that address three key principles drawn from the clear guidance of the courts and the Act itself. First, the FCC must implement rules that advance facilities-based competition. Second, the rules must be narrowly tailored because to impose unbundling where it is not needed would inflict heavy social costs and would actually harm competition. Third, and equally importantly, the FCC's rules must provide certainty to promote investment. Finally, USTA discussed and answered questions

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<sup>1</sup> *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 69 Fed. Reg. 55128 (2004) ("NPRM").

<sup>2</sup> 359 F.3d 554 (D.C. Cir. 2004) (USTA II), *pets. for certiorari filed*, Nos. 04-12, 04-15, 04-18 (June 30, 2004).

based on the findings of the UNE Fact Report 2004;<sup>3</sup> including the presence of extensive intermodal and intramodal competition including but not limited to competitors for mass market switching and high capacity loops and transport.

In accordance with Section 1.1206(b)(2) of the FCC's rules, this letter is being filed electronically with your office. Please feel free to contact me at (202) 326-7271 should you have any questions.

Sincerely,



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Michael T. McMenamin  
Associate Counsel

cc: Tom Navin  
Jeremy Miller  
Carol Simpson  
Tim Stelzig  
Gail Cohen  
Ian Dillner  
Russ Hanser  
Cathy Zima

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<sup>3</sup> UNE Fact Report 2004, Prepared for and Submitted by BellSouth, SBC, Qwest, and Verizon, Peter W. Huber and Evan T. Leo, filed on October 4, 2004.

